

.FO 1

FIRST APPEAL NO. 1157 of 1996

Date of Decision : 18.6.1996

For Approval & Signature

THE HON'BLE MR. JUSTICE N.J.PANDYA

AND

THE HON'BLE MR. JUSTICE A.R.DAVE

1. Whether reporters of Local Papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not ?

3. Whether their Lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any other order made thereunder ?

5. Whether it is to be circulated t...

Civil Judge ?

Mr. M.R.Anand, learned GP with Mr. Maulin Raval, learned AGP for the Appellant.

Mr. K.G.Sheth, learned Advocate for Respondent Nos. 1 to 7

Mr. A.P.Medh, learned Advocate for Respondent No.10.

Rest of Respondents Served.

CORAM : N.J.Pandya & A.R.Dave, JJ

18.6.1996

ORAL JUDGMENT : (Per : N.J.Pandya, J)

Two grounds are urged in the memo of appeal in respect of the award given by the learned MAC Tribunal of District :

Banaskantha at Palanpur on 4.12.1982. Two claim petitions were disposed of by the said common judgment. First petition was MAC Petition No. 137/81 and the second was MAC Petition No. 126/81. The appeal is filed against the later.

By the said judgment, the learned Tribunal Judge has awarded a sum of Rs. 1,25,000/= to the widow and mother of the deceased Narendra.

With regard to said two grounds, first one is that the driver of the jeep car belonging to the appellant Government cannot be said to be negligent because the incident occurred as suddenly one of its front tyre had burst. Obviously as a driver, it is his duty to see that the vehicle which he is driving with or without passengers is road-worthy or not. The least he could have done was to check the condition of tyres before driving which obviously he did not exercised that care. Hence, the finding as to the negligence given by the Tribunal, in our opinion, is eminently called for.

The next ground is about quantum. The government, nodoubt, had taken out the insurance policy, but had not covered the passengers. The deceased Narendra was the passenger.

The deceased was working as the Executive Engineer with the Government and was shown to be earning Rs. 1555.80 as per exh.73 - salary-sheet. In respect of two claimants including the deceased, therefore, virtually the amount has been divided equally. That is how Rs. 560-00 came to be deducted leaving the balance amount of Rs. 1000/=. Taking that to be the datum figure, the learned Judge has worked out only dependency of the widow and mother to be Rs. 1200/= and has given multiplier of 10. At the time of incident and particularly at the time of death, the deceased was left with almost 7 1/2 years' service. This would mean that his age would be roughly 50 years at the time of incident. 10 years' multiplier, in our opinion, therefore, cannot be said to be excessive.

In our opinion, therefore, the award passed by the Trial Court would not suffer from any infirmity. In the Trial Court, an attempt was made to show that the deceased who had himself filed the petition had died during its pendency and the claimants were not able to establish the link between the injuries sustained in the incident and eventual death. However, that ground is not taken atall in the memo of the appeal and even if it is taken, in our opinion, the same is correctly dealt with by the learned Tribunal Judge giving valid reasons in rejecting the same.

On all fours, therefore, there are no sufficient reasons to entertain the appeal and, therefore, the appeal is dismissed

with costs.

Rawal*